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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWA Docket No. 05-0026
)	
Le Anne Smith, an individual,)	
)	
Respondent)	Decision and Order

Appearances:

Colleen A. Carroll, Esq., Office of the General Counsel (Marketing Division), United States Department of Agriculture, Washington, D.C., for the Complainant (APHIS); and

Larry J. Thorson, Esq., Cedar Rapids, Iowa, for the Respondent Le Anne Smith.

Decision Summary

1. The principal issue is whether, since approximately February 1, 2003, Le Anne Smith, the Respondent, has been an exhibitor under the Animal Welfare Act. I conclude she has not. Further issues are whether Le Anne Smith violated provisions of the Animal Welfare Act, as amended, 7 U.S.C. § 2131 *et seq.* (herein frequently the “AWA” or the “Act”), and Regulations issued thereunder. I conclude she did not.

Parties and Allegations

2. The Complainant is the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (herein frequently “APHIS” or “Complainant”).

3. APHIS is represented by Colleen A. Carroll, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, S.W., Washington D.C. 20250-1417.

4. The Respondent, for this Decision,¹ is Le Anne Smith, an individual (herein frequently “Le Anne Smith” or “Respondent”).

5. Le Anne Smith is represented by Larry J. Thorson, Esq., Cedar Rapids, Iowa.

6. The Complaint, filed on July 14, 2005, alleges that Le Anne Smith violated provisions of the Animal Welfare Act, as amended, 7 U.S.C. § 2131 *et seq.* (herein frequently the “AWA” or the “Act”), and Regulations issued thereunder. As to Le Anne Smith, the Regulations specified in the Complaint are 9 C.F.R. § 2.40(a), 9 C.F.R. § 2.40(a)(1), 9 C.F.R. § 2.40(b)(2), 9 C.F.R. § 2.75(b)(1), 9 C.F.R. § 2.126(a), 9 C.F.R. § 2.131(b)(1) [formerly § 2.131(a)(1)], 9 C.F.R. § 2.131(c)(1) [formerly § 2.131(b)(1)], 9 C.F.R. § 2.131(c)(3) [formerly § 2.131(b)(3)], 9 C.F.R. § 2.131(d)(1) [formerly § 2.131(c)(1)], and 9 C.F.R. § 2.100(a) (including a number of standards).

7. Le Anne Smith, through Larry J. Thorson, Esq., filed her Answer on August 8, 2005. Le Anne Smith denied, in her Answer and repeatedly thereafter, that she was an exhibitor, that she had any obligations under the Animal Welfare Act, that she had a business

¹ (a) By separate Decision issued March 29, 2012, I decided the allegations against Respondents Craig A. Perry and Perry’s Wilderness Ranch & Zoo, Inc. (b) By Consent Decision issued April 21, 2006, I decided the allegations against Respondent American Furniture Warehouse, a Colorado corporation, 65 Agric. Dec. 378 (2006), http://www.dm.usda.gov/oaljdecisions/AWA_05-0026_042106.pdf (c) By Decision issued November 16, 2009, I decided the allegations against Respondents Jeff Burton and Shirley Stanley, individuals doing business as Backyard Safari, when they failed to appear, 68 Agric. Dec. 819 (2009), http://www.dm.usda.gov/oaljdecisions/files/091116_AWA_05-0026_do.pdf.

exhibiting animals, and that she had any obligations to the business. Affirmatively, Le Anne Smith asserted that she was not a shareholder, officer, director, or employee of the corporation.

8. The hearing was held during 13 days: November 16-20, 2009; and December 7-11, 2009 in Chicago, Illinois; and January 11-13, 2010 in Cedar Rapids, Iowa. Thereafter, the parties filed Briefs. The last filing, on April 7, 2011, was Respondents' Motion to Strike a Portion of the Complainant's Reply Brief, which I granted in the Decision regarding Craig Perry and the corporation, p. 25.

Mixed Findings of Fact and Conclusions

9. Violations during February 1, 2003 through June 15, 2005, are the ones Le Anne Smith is alleged to have committed. Perry's Wilderness Ranch and Zoo, Inc. ("the corporation") was the Animal Welfare Act licensee, and Craig A. Perry ("Craig Perry") was the licensee's agent. Craig Perry was the sole director and the sole officer of the corporation. Tr. 2691. Le Anne Smith was not married to Craig Perry (Tr. 2029), although she was occasionally referred to as his fiancé. Dr. Bellin at times referred to Le Anne Smith as Craig Perry's wife, but she was not. Dr. Bellin at times referred to Le Anne Smith as Craig Perry's "significant other," which I regard as accurate. Le Anne Smith and Craig Perry lived together with their 4 children in Iowa (Tr. 2029-30), near the zoo. Craig Perry supported Le Anne Smith and their 4 children.

10. For his acts, omissions and failures under the Animal Welfare Act, Craig Perry is liable, and while acting for the corporation Craig Perry subjects the corporation to liability,

in addition to himself, pursuant to section 2139 of the Animal Welfare Act (entitled "Principal-agent relationship established"). 7 U.S.C. § 2139.

11. Le Anne Smith was not named on the Animal Welfare Act license applications or renewals as "authorized to conduct business" or in any other capacity. CX 1. Le Anne Smith had no authority and no responsibility regarding Craig Perry's or the corporation's Animal Welfare Act undertakings. Le Anne Smith was not a shareholder, officer, director, or employee of the corporation. Le Anne Smith was not an employee of Craig Perry. Le Anne Smith did not own the animals. Le Anne Smith was not an owner, lessor, or lessee of the real property or personal property required by the zoo or the animals. Le Anne Smith did some shopping, as requested by Craig Perry, for supplies that were used for the zoo or the animals exhibited. Le Anne Smith paid some bills, as requested by Craig Perry; signed some checks, as requested by Craig Perry, for the zoo or the animals exhibited. *See* Respondents' Brief filed January 20, 2011 (2011 Respondents' Br.), at 2-6 of 41.

12. Le Anne Smith cooperated with Dr. Bellin, APHIS's primary inspector, when he asked to inspect the animals and records, and she was the only person available; she cooperated when Dr. Bellin asked her to receive a copy of his inspection report and to sign, acknowledging receipt. RXt-41. If there were any "titles" given to Le Anne Smith on the signature line which merely acknowledged receipt, such "titles" were chosen by Dr. Bellin to satisfy his requirements; they were not bestowed by Craig Perry or the corporation; they were not chosen by Le Anne Smith.

13. HANDLING VIOLATION ALLEGATIONS NOT PROVED AS TO LE ANNE SMITH: 9 C.F.R. § 2.131(b)(1) [formerly § 2.131(a)(1)], 9 C.F.R. § 2.131(c)(1) [formerly § 2.131(b)(1)], 9 C.F.R. § 2.131(c)(3) [formerly § 2.131(b)(3)], 9 C.F.R. § 2.131(d)(1) [formerly § 2.131(c)(1)]. I begin by addressing paragraphs 27, 29, 30 and 33 through 35 of the Complaint. Le Anne Smith is named in each of them. Each of them was proved in the Decision regarding Craig Perry and the corporation.

(a) NOT PROVED. Addressing the most recent handling violation first, I begin with paragraph 35 of the Complaint, in Loveland, Colorado, 2004 December 27, Thunder Mountain Harley Davidson Dealership. Le Anne Smith had nothing to do with the use as a backdrop of the double-sided fireplace. NOT PROVED.

(b) NOT PROVED. Next, I address paragraphs 33 and 34 of the Complaint, in Grayslake, Illinois, 2004 August 1, Lake County Fair. Le Anne Smith was not at the Lake County Fair, and she remembered that she wasn't because she had just had a baby at the time of the fair. Tr. 2076-77. Le Anne Smith had nothing to do with the lion cub that was unrestrained and climbed up John Bogdala's torso and bit him on the shoulder. Erich Cook, the handler who was in charge of cub care for the photo opportunities at the Lake County Fair, testified about Le Anne Smith. Tr. 1871-73.

BY MR. THORSON:

Q Did Le Anne Smith have anything to do with the business?

MS. CARROLL: Objection. Foundation.

JUDGE CLIFTON: I'm going to allow the witness to answer that yes, no, or I don't know. If the answer is either yes or no, then I'll ask for how he knows.

So you may answer.

THE WITNESS: The whole time I volunteered for Craig I never saw Le Anne Smith have anything to do with the animals or the business. The lady is raising four kids. They are good kids but they're all young and they're a handful. I'm a parent myself. I don't think she had the time to do anything with the business. My experience I would say no.

JUDGE CLIFTON: And you may follow-up to add to this foundation if you wish but he covered it pretty well.

MR. THORSON: I think he did.

BY MR. THORSON:

Q As far as doing the chores outside, it was you or other volunteers that did the chores. Correct?

A Yes, sir.

Q I would assume she didn't drag her young kids into the area where the carnivores were. Correct?

A No. Absolutely no.

Tr. 1871-73.

NOT PROVED.

(c) NOT PROVED. Next, I address paragraphs 27, 29, and 30 of the Complaint, primarily in Thornton, Colorado, 2003 February 19-22, American Furniture Warehouse. On February 19, 2003, Le Anne Smith was home (in Iowa) when Timothy Carper arrived. Timothy Carper, when testifying, was able to identify Le Anne Smith, pointing her out in the hearing room, as the person to whom he delivered the tiger cubs, carrier, paperwork, and formula that Jeff Burton had sent with him. When Timothy Carper testified, he minimized his responsibility in the transfer. Not until Craig Perry testified, did I realize that the transfer of the 3 tiger cubs from Jeff Burton to Craig Perry was all Timothy Carper's idea. Craig Perry arrived home soon, so Le Anne Smith was not required to do anything with the 3 tiger cubs on February 19, 2003, except take them inside. She did not take them out of their carrier. Tr. 2039-41. After the 3 tiger cubs died in Thornton, Colorado on February 22, 2003, Le Anne Smith drove to Lincoln, Nebraska, as requested by Craig Perry, to pick up their frozen bodies to transport them for necropsy, as arranged by Dr. James Slattery in Iowa. Those two encounters with the 3 tiger cubs were Le Anne Smith's only involvement with them. Le Anne Smith had nothing to do with the exhibiting of the 3 tiger cubs in Thornton Colorado on February 21, 2003. NOT PROVED.

14. ADDITIONAL HANDLING VIOLATION ALLEGATIONS NOT PROVED AS TO LE ANNE SMITH: 9 C.F.R. § 2.131(b)(1) [formerly § 2.131(a)(1)] and 9 C.F.R. § 2.131(c)(1) [formerly § 2.131(b)(1)]. This paragraph recounts alleged handling violations, found in paragraphs 24, 25, 31 and 32 of the Complaint, that were not proved in the

Decision regarding Craig Perry and the corporation. Le Anne Smith is named in each of the paragraphs.

(a) NOT PROVED. Addressing the most recent handling violations first, I begin with paragraph 32 of the Complaint, in Tucson, Arizona, 2003, April 21, Pima County Fair. *See Respondents' Brief* filed January 20, 2011 (2011 Respondents' Br.), at 21 of 41. Le Anne Smith had nothing to do with this event. NOT PROVED.

(b) NOT PROVED. Next, I address paragraph 31 of the Complaint, regarding transporting 2 tiger cubs from Jackson, Minnesota to Colorado, 2003 February 25-26, donated from Vogel's Exotics. Le Anne Smith had nothing to do with transporting these tiger cubs. Further, what is cited, is 9 C.F.R. § 2.131(b)(1) [formerly § 2.131(a)(1)] (perhaps intended to address these 2 tiger cubs a couple of months later in Tucson, Arizona, 2003, April 21, Pima County Fair), which was NOT PROVED.

(c) NOT PROVED. Next, I address paragraph 25 of the Complaint, from Dr. Bellin's visit to Cedar Rapids, Iowa, 2003, February 1, Cedar Rapids Sportsmen's Show. The evidence (CX 20 and Tr. 562-78) shows that Dr. Bellin anticipated that something might go wrong in the photo opportunities. Dr. Bellin's inspection was prior to exhibition; Dr. Bellin insisted Craig Perry get leashes and collars. Dr. Bellin also has concerns about disease transmission (from young tigers and lions to humans; and from humans to young tigers and lions). Dr. Bellin does not believe that members of the public can touch young tigers and lions safely. Although Dr. Bellin cannot envision any safe photo opportunity where the members of the public can touch young tigers and lions, Dr. Bellin never saw any

violation, nor was he aware of any violation having occurred. Le Anne Smith was not present at the Cedar Rapids Sportsmen's Show exhibit at any time, and her name is not mentioned in the report. Tr. 2303-05. Le Anne Smith had nothing to do with the exhibiting in the Cedar Rapids Sportsmen's Show. NOT PROVED.

(d) NOT PROVED. Next, I address paragraph 24 of the Complaint. One lion cub, Shelby, had ringworm, which is contagious. What is not proved, is exhibition to the public of an animal with ringworm. Le Anne Smith had nothing to do with the handling specified in paragraph 24 of Shelby or any other of the animals. NOT PROVED.

15. VETERINARY CARE VIOLATION ALLEGATIONS NOT PROVED AS TO LE ANNE SMITH: 9 C.F.R. § 2.40(a), 9 C.F.R. § 2.40(a)(1) and 9 C.F.R. § 2.40(b)(2). I address paragraphs 14 through 18 of the Complaint. Le Anne Smith is named in each of them. Each of them was proved in the Decision regarding Craig Perry and the corporation, at least in part.

(a) NOT PROVED. I address paragraph 18 of the Complaint, regarding transporting 2 tiger cubs from Jackson, Minnesota to Colorado, 2003 February 25-26, donated from Vogel's Exotics. Le Anne Smith had nothing to do with transporting these tiger cubs. NOT PROVED.

(b) NOT PROVED. Next I consider paragraphs 14, 15 and 17 of the Complaint, regarding primarily Thornton, Colorado, 2003 February 19-27. After the 3 tiger cubs died in Thornton, Colorado on February 22, 2003, Le Anne Smith drove to Lincoln, Nebraska, as requested by Craig Perry, to pick up their frozen bodies to transport them for necropsy, as

arranged by Dr. James Slattery in Iowa. Le Anne Smith had nothing to do with the veterinary care or the Program of Veterinary Care, nor could she have, regarding the 3 tiger cubs donated by Jeff Burton and the 2 tiger cubs donated by Vogel's Exotics. NOT PROVED.

(c) NOT PROVED. 9 C.F.R. § 2.40(b)(2). Now I consider paragraph 16 of the Complaint, regarding the "home base" in Iowa, 2003 February 27, through March 10. Dr. Burden had inspected on February 27, 2003 and dated his report March 10, 2003. CX 22. Dr. Burden examined the Program of Veterinary Care, specifically the emergency care plan. CX 22. Regarding CX 21, there was an emergency care plan; but there was a separate space for another emergency care plan for exotic animals, which had been left blank. The noncompliance was, that the blank needed immediate completion. CX 22. Le Anne Smith had nothing to do with the Program of Veterinary Care. NOT PROVED.

16. BOOKKEEPING VIOLATION ALLEGATIONS NOT PROVED AS TO LE ANNE SMITH. 9 C.F.R. § 2.75(b)(1). The alleged bookkeeping violations, in paragraph 19 of the Complaint, were not proved and were frustrating to deal with. I'm disappointed in APHIS that these items were written up as noncompliance items. Dr. Bellin's analysis (or that of Inspector Beard or other co-worker(s)) failed to take into account animal births at home and animal deaths and their impact on inventory. (Those are not reported on the Form 7020s.) The Record of Animals on Hand (RXt-60) was apparently not referenced adequately by Dr. Bellin or Inspector Beard or other co-workers. (Were only the Form 7020s looked at?) Disproving these alleged noncompliances has been an expensive process for Respondents to

set the record straight, both in the Answer and at the hearing. Didn't someone at APHIS consider it odd that Respondents would suddenly develop so many failures in accounting for their animals? Tr. 3127. Craig Perry testified that they had thought the inventory of animals had to kept from the beginning of time (Tr. 2983); Steve (Dr. Bellin) is the one that said you don't need to do that. All you need to do is keep the ones that you have on hand for that. Okay. Tr. 2983. (Dr. Bellin) also told us that we only needed to keep the 7020 forms for one year. So we started disposing of them after one year. Tr. 2983.

Mr. Thorson did an excellent job of walking us through the Record of Animals on Hand (RXt-60) and other documents to deal with the allegations, animal by animal. Tr. 3090-3127. No bookkeeping violations were proved. RXt-50 shows disposition (sale) on October 18, 2003 of 2 African lions (6-week old), 1 Zebra (gelding, 4 years old), and 1 ZeDonk (male, 3 years old). Tr. 3040-42. Thus, the allegations in paragraph 19. ii. and 19. iii. are nullified. RXt-51 shows that Dr. Slattery euthanized Bobby, a 17 year old bobcat, on October 13, 2003. Tr. 3043-44. RXt-60, p. 6. Thus, the allegations in paragraph 19. x. and 19. xi. regarding the bobcat are nullified. RXt-52 shows disposition (donation) on June 11, 2003, of 1 Zorse (2-1/2 months), 1 camel (born 5-4-03), and 1 tiger (born 11-21-03). Tr. 3047-58. RXt-60, Tr. 3098-3101. Thus, the allegations in paragraph 19. iv., vii. (except the birthdate is obviously mistaken, and *see* RXt-60, page 5, which shows 2 tigers born at home, and the date 11/21/03 has been corrected to 11/21/02. Tr. 3108) are nullified. RXt-60, p. 5, shows disposition of multiple reindeer on January 25, 2004. Thus, the allegations in paragraph 19. i. are nullified. RXt-60, page 4 shows 2 aoudads died in April 2003 (one died

in shipping, and one from injuries from being laid on). Thus, the allegations in paragraph 19. v. are nullified. RXt-60, page 4, shows another aoudad, male, bought 11-03, got rammed and died. Thus, the allegations in paragraph 19. vi. are nullified. Regarding the 2 tigers born at home 11/21/02 (RXt-60, page 5), one, the female, died on her birthdate, 11/21/02, when she got laid on; and the other, Popeye, went to Amarillo Wildlife on 06/11/03. RXt-60, p. 5. Tr. 3109. RXt-60, page 1, shows 2 tigers that were at Craig Perry's premises in February 2005. Then, RXt-60, page 3, shows Sasha and Pasha, born at home on April 4, 2002; and 3 tigers born at home on May 5, 2003. Counting the tigers on hand, all are accounted for. Tr. 3110-16. Thus, the allegations in paragraph 19. viii. are nullified. CX 35, p. 2 shows 3 eland purchased on April 11, 2003. That corresponds with the 3 eland shown on RXt-60, page 6. Tr. 3120-21. One of the eland died, was found dead in the trailer after having been brought home. Tr. 3118. Thus, the allegations in paragraph 19. ix. are nullified.

Tr. 3090-3127.

I am unhappy that these noncompliances were alleged (CX 59), in part because Dr. Bellin had instructed Le Anne Smith to rewrite and consolidate Craig Perry's animal inventory lists; Dr. Bellin had also instructed Le Anne Smith that the Form 7020 did not need to be kept for over a year. The following excerpt of Le Anne Smith's testimony (on direct examination) is instructive (she calls Dr. Bellin "Steve"). Tr. 2052-55.

A Yes, during -- during an inspection with Dr. Bellin, he had asked me to convert Craig's ongoing inventory over the years down to what was presently there because

he was going through 20 pages where he felt that was an inconvenience. So, he asked me to convert it all down there. So, I did that for him.

(Whereupon, the document was marked as RXT-60 for identification.)

BY MR. THORSON:

Q Was the original inventory, this 20 pages -- was it 20 pages at least or more?

A At least.

Q Was this in your handwriting or Craig Perry's handwriting?

A Craig's. As far as I know, that inventory took him clear back probably to when he started, but it was a lot of papers for Steve to go through and Steve just asked me to simply convert it down to what there was presently.

Q Was he sitting there while you did that?

A I believe -- yes, I believe I was -- I think I did get through the whole thing while he was there.

Q So, Dr. Bellin saw this inventory at some point in time. Do you remember exactly when that was or approximate date that you would have done this?

A If -- if I can remember right, I believe it was the inspection prior to -- is it the February '05 inspection possibly? The one with Mr. Beard.

Q You can look at the Government exhibits. CX-59 and 60 I believe are the last.

A Um-hum. Yes, I believe that I did this the prior inspection to the February 5th or 15th, '05 inspection.

Q And when you say the 15th, that's the date at the bottom of the page or the top of the page?

A Oh, the bottom. I guess it would be February 8, '05.

Q All right. And as far as the inventory itself goes, you copied this from other paperwork. Is that correct?

A Yes, I did.

Q Does that explain why the dates are different on it and they go from '95 to 2005 for instance?

A Well, yes, I just -- I just went through the old inventory and it's probably not in order. I just went through the pages and what was still present, I put on this one.

Q Now, did Dr. Bellin ever tell you it had to be in order or did he tell you what order it had to be in?

A No, he told me he just wanted a condensed version so he didn't have to shuffle through so many papers.

Q Did Dr. Bellin tell you or Mr. Perry whether or not Form 7020 had to be kept for a certain period of time?

A I believe he had told me that they did not need to be kept for over a year because I would hand him the whole folder. He didn't like shuffling through all of those papers either. So, I believe he had told me that.

Tr. 2052-55.

I conclude that Dr. Bellin's instructions, which I find interfered with Craig Perry's and the corporation's bookkeeping, are additional reasons to find that no record-keeping violations were proved. Furthermore, the bookkeeping was not Le Anne Smith's responsibility. NOT PROVED.

17. FAILURE TO ALLOW INSPECTION ALLEGATION NOT PROVED AS TO LE ANNE SMITH. 7 U.S.C. § 2146(a). 9 C.F.R. § 2.126(a). Paragraph 20 of the Complaint was not proved in the Decision regarding Craig Perry and the corporation. Le Anne Smith is named in paragraph 20. Craig Perry did not refuse inspection (as Dr. Bellin writes in CX 58), and Le Anne Smith was not asked to assist the inspectors to inspect the animals and records. NOT PROVED.

18. NONCOMPLIANCE WITH STANDARDS ALLEGATIONS NOT PROVED AS TO LE ANNE SMITH: 9 C.F.R. § 2.100(a) (including a number of standards). This paragraph recounts alleged noncompliances with standards found in paragraph 36 of the Complaint. Le Anne Smith is named in ones listed here, each of which was proved, at least in part, in the Decision regarding Craig Perry and the corporation.

36.i. Le Anne Smith had no responsibility and was not authorized to write a feeding protocol for young tiger cubs.

36.j. and 36.p. Le Anne Smith had no responsibility and was not authorized to remove animal waste, food waste, and ice and snow (from the ice and snow, the low was 17° having fallen from a high of 51° 4 days earlier, RXt-53, p. 13) (in 2005, CX 59).

36.k. Le Anne Smith had no responsibility and was not authorized to repair the camel's wall (in 2005, CX 59).

36.l. Le Anne Smith had no responsibility and was not authorized to repair the lion's shade tarps (in 2005, CX 59).

36.m. Le Anne Smith had no responsibility and was not authorized to repair the wolves' shade tarps (in 2005, CX 59).

36.n. Le Anne Smith had no responsibility and was not authorized to store the packages of meat (in 2005, CX 59).

36.o. Le Anne Smith had no responsibility and was not authorized to decide the diet for any of the animals, not the large felids, not the primates, not any of the animals (in 2005, CX 59).

36.p. *See* 36.j., where the waste is adequately addressed.

36.q. Le Anne Smith had no responsibility and was not authorized to remove from the large felids' enclosure any of the food remains (uneaten portions of a calf) (in 2005, CX 60).

36.r. Le Anne Smith had no responsibility and was not authorized to eliminate standing water (in 2005, CX 60).

19. NONCOMPLIANCE WITH STANDARDS ALLEGATIONS NOT PROVED AS

TO LE ANNE SMITH: 9 C.F.R. § 2.100(a) (including a number of standards). This paragraph recounts an alleged noncompliance with standards, found in paragraph 36 of the Complaint, that was not proved in the Decision regarding Craig Perry and the corporation.

Le Anne Smith is named.

36.s. No violation of 9 C.F.R. § 3.129(a) was cited (CX 60) and none proved. Le Anne Smith had no responsibility and was not authorized to decide the diet for any of the animals, not the large felids, not the primates, not any of the animals. NOT PROVED.

20. Was Le Anne Smith an agent of the corporation? of Craig Perry? I suppose one could argue that she was, a sort of an agent, in that she was authorized to run the errands she ran (for the corporation, for Craig Perry), to make the purchases she did (for the corporation, for Craig Perry), to do the clerical work she did (for the corporation, for Craig Perry), and to give Dr. Bellin access to inspect the animals and records when she was the only person available (for the corporation, for Craig Perry). Does that somehow subject her to being treated as if a licensee under the Animal Welfare Act?

21. Under that theory, other “agents” went unnamed as respondents, even though they actually had something to do with the animals, for example, Erich Cook, John Phillips, Jr. and Lindsay Pierce. I would not want such workers to be named as respondents, and APHIS does not typically name the workers as respondents. Le Anne Smith had no acts, omissions or failures under the Animal Welfare Act. 7 U.S.C. § 2139. So why was Le Anne Smith named as a respondent? If APHIS’s theory is that Le Anne Smith is somehow a partner in the business, APHIS failed to prove such theory. APHIS argues that Le Ann Smith was essential to the operation of the business. APHIS Brief filed March 31, 2011 (2011 APHIS Br.) at 4 of 19. APHIS failed to prove such theory.

22. Le Anne Smith testified about what Dr. Bellin had told her. (Dr. Bellin had been Craig Perry’s APHIS inspector for 18 years by the time of the hearing). I find Le Anne

Smith's testimony about what Dr. Bellin had told her entirely credible. Le Anne Smith was an extremely credible witness. Tr. 2686-90.

BY MR. THORSON:

Q Did Dr. Bellin ever have any comments to you about this particular case we're involved in today?

A Yes, he did.

Q What did he say about this particular case?

A Craig made somebody really mad at the top.

Q Did he indicate that there was a situation where somebody was out to get either you or Craig?

MS. CARROLL: Objection again to leading.

JUDGE CLIFTON: Yes, what I want to know is what this witness remembers about what Dr. Bellin said.

So, to the extent you can really recall what he said, even if it's not verbatim, you may tell me.

THE WITNESS: Mr. Bellin -- I asked why in the world I would be involved and Mr. Bellin said he did not know, that he figured that eventually I would be. He expressed how somebody really is after Craig. Wants Craig's license, I believe is what he said. He had told me that he thinks at times Craig may have gotten too big, traveled too much, or some of that sort, and they did not like that. He got there one time and he said, "Oh, boy, he really made somebody mad."

JUDGE CLIFTON: I'd like to go back, Ms. Smith, to the beginning of what you just relayed to me about when Dr. Bellin was commenting in response to why you were involved. You asked why you were involved, and what did Dr. Bellin say about that?

THE WITNESS: He told me that he did not know because -- he did not know. I think his direct quote was, "I don't know, but it doesn't surprise me. They're really after Craig's license." And I just -- I think the conversation continued on as far as, you know, I of course was unhappy about this and I didn't understand why because this is not my deal, it's his. And Mr. Bellin said, "I know. You've always made that very, very clear. And I know that, but they really want Craig's license." Which is what I recall. I -- I know I was pretty concerned and upset at that discussion.

BY MR. THORSON:

Q Did Dr. Bellin ever mention anything with regard to any documentation concerning this case?

A As far as the complaint, or -- or -- I'm not -- I'm not understanding.

Q Well, it's just a general question. Again, did he say anything about any documentation that you've seen concerning this case, or anything about any documentation about this case?

A Oh, well, in his comments about they -- they're really after -- out to get Craig, or Craig really made them mad. And he's made several comments. But in regards to all of that, yes, I believe that's what he was referring to, is his communications.

Q Is there anything else you can remember that he told you about documentation concerning the case?

A As far as documentations, other than -- I -- I -- I don't -- I'm -- that's so vague. I don't know.

Q Well, let me ask it a little more specifically. Did he say anything about internal documentation concerning the case?

A Did -- in a -- yes, I believe that's what he was referring to is -- is his communications back and forth -- is when he was telling me how, God, they wanted Craig's license. He -- he didn't show anything to me.

Tr. 2686-90.

Order

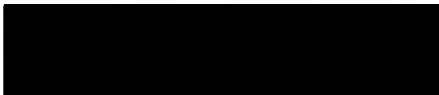
23. APHIS's requests for relief from Le Anne Smith are DENIED.

Finality

24. This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A).

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties, and separate copies shall be served upon Craig Perry and the corporation (also addressed to Mr. Thorson).

Done at Washington, D.C.
this 30th day of March 2012



Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
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APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time

for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145